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U.S. DISTRICT COURT  
DISTRICT OF MASS

December 12, 2005

Lisa Hourihan, Courtroom Clerk to the  
Honorable Reginald C. Lindsay  
United States District Court  
John J. Moakley U.S. Courthouse  
1 Courthouse Way  
Boston, MA 02210

RE: Trans-Spec Truck Service, Inc. v. Caterpillar Inc.  
Civil Action No. 04-11836-RCL

Dear Ms. Hourihan:

I think a short case management conference might be appropriate in this matter. My concern is that the litigation is entering its final stages, with expert discovery ongoing, the deadline for dispositive motions soon to be upon us, and a final pretrial conference probably to follow not long thereafter, but Caterpillar has not yet filed an answer to the Second Amended Complaint because of the pendency of a Rule 12(b)(6) motion which it filed in May, shortly after the Second Amended Complaint was served. I am concerned that if the Rule 12(b)(6) motion is not granted in its entirety, so that Caterpillar is required to file an answer to the Second Amended Complaint, issues raised by the answer may be assigned by Trans-Spec as reason to delay proceedings. I am also a little concerned, I should add, about issues of waiver and about possible waste of the Court's time if Caterpillar, to meet the upcoming deadline for dispositive motions, files a summary judgment motion based in part on the same legal grounds underlying the pending Rule 12(b)(6) motion that is directed to the face of the Second Amended Complaint alone.

Please bring my concerns to Judge Lindsay's attention and, if he thinks the concerns warrant a short case management conference, please let me know when it would be convenient for him to see the parties.

Very truly yours,

  
John A. K. Grunert

cc. Nancy M. Reimer, Esquire